

**AN ORDINANCE AMENDING CHAPTER 48 OF THE CITY OF MEMPHIS, CODE OF ORDINANCES, BY ADDING SECTIONS 48-23 THRU 48-28 TO INCLUDE "PROPERTY REGISTRATION REQUIREMENTS" THAT WILL REQUIRE OWNERS OF REAL PROPERTIES, INCLUDING CONDOMINIUMS, TO MAINTAIN ON FILE WITH THE COUNTY REGISTER OR OTHER DESIGNEE OF THE CITY, AN ACCURATE NAME AND MAILING ADDRESS OF ONE OF MORE OF THE OWNERS FOR PURPOSES OF NOTICE AND SERVICE OF PROCESS AND TO REQUIRE REGISTRATION BY A MORTGAGEE OR MORTGAGEE'S AGENT UPON NOTICE OF DEFAULT OR VACANCY BY A MORTGAGOR REGARDING SINGLE FAMILY RESIDENTIAL REAL PROPERTY INCLUDING CONDOMINIUMS LOCATED IN THE MUNICIPAL BOUNDARIES OF THE CITY OF MEMPHIS.**

**WHEREAS**, the present mortgage foreclosure crisis has serious negative implications for all communities trying to manage the consequences of property vacancies and abandoned real properties; and

**WHEREAS**, the City of Memphis finds that the presence of vacant and abandoned properties can lead to a decline in property value, a corresponding decline in property tax revenue, create and attract nuisances, and lead to a general decrease in neighborhood and community aesthetic; and

**WHEREAS**, the City of Memphis (hereinafter referred to as "City") recognizes an increase in the number of vacancies and abandoned properties located throughout the City; and

**WHEREAS**, the City is challenged to identify and locate the owners of such vacant and abandoned properties; and

**WHEREAS**, the City has already adopted property maintenance codes to regulate building standards for the exterior of structures and the condition of the property as a whole; and

**WHEREAS**, the City desires to amend the City's Code by creating Section 48-23 through 48-28

to establish (1) real property registration requirements, and (2) a default and foreclosure registry, and;

**WHEREAS**, the City has a vested interest in protecting neighborhoods against decay caused by vacant and abandoned properties and concludes that it is in the best interests of the health, safety, and welfare of its citizens and residents to impose registration requirements upon owners of real property located within the City and in certain cases upon mortgagees and other beneficial owners, as remedial measures to assist in correcting ongoing practices by property owners causing and or contributing to blight, unsanitary and unsafe conditions.

**NOW, THEREFORE,**

**SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS** that **Chapter 48 of the City of Memphis, Code of Ordinances** is hereby amended by adding Sections 48-23 thru 48-28 to read as follows:

## **CHAPTER 48 ARTICLE II:**

### **REAL PROPERTY REGISTRATION REQUIREMENTS**

#### **Sec. 48-23. (a) Purpose and Intent.**

It is the purpose and intent of the City of Memphis (“City”) to establish a process to address the deterioration and blight of City neighborhoods caused by an increasing amount of abandoned, foreclosed or distressed real property located within the City, and to identify, regulate, and reduce the number of abandoned properties located within the City. It is the City's further intent

to establish Real Property Registration Requirements as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of abandoned and foreclosed real property.

**(b) Definitions.**

The following words and terms shall have the meanings set forth in this section, except where otherwise specifically indicated.

- i. ***Abandoned Real Property*** means any real property that is vacant, or is under notice of default, or is pending a mortgage foreclosure, or notice of mortgagee's sale, or lien sale and/or properties that have been the subject of a mortgage foreclosure sale where title is retained by the mortgagee, and/ or any properties transferred under a deed-in-lieu of foreclosure sale, a short sale or any other legal means.
- ii. ***Default*** means, that the mortgagee has filed a foreclosure action or notice of default on the mortgage. A mortgage shall be considered in default at such time as the mortgagee declares said mortgage to be in default either by letter or notice to property owner, by recording a lis pendens, by commencing foreclosure proceedings; or by any other actions demonstrating a breach of a security covenant on a property.
- iii. ***Evidence of Vacancy*** means any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; electricity, water or other utilities turned off; stagnant swimming pool; or statement by neighbors, passer-by, delivery agents or government agents.

- iv. **Foreclosure** means the judicial or non-judicial process by which a property, placed as security for a mortgage loan, is to be sold at an auction to satisfy a debt upon which the borrower has defaulted.
- v. **Mortgage** means, any consensual lien created by a written instrument which grants or retains an interest in real estate to secure a debt or other obligation. The term includes, without limitation:
  - aa. Mortgages securing reverse mortgage loans;
  - bb. Mortgages securing revolving credit loans;
  - cc. Every Deed conveying real estate, although an absolute conveyance in its terms, which shall have been intended only as a security in the nature of a mortgage; and
  - dd. Equitable mortgages.
- vi. **Mortgagee** means:
  - aa. the holder of an indebtedness or oblige of a non-monetary obligation secured by a mortgage or any person designated or authorized to act on behalf of such holder;
  - bb. any person claiming through a mortgage as successor; and
  - cc. Any person identified as such in a recorded document which has not been released, assigned, or superseded of record.
- vii. **Mortgagor** means the person whose interest in the real estate is the subject of the mortgage and any person claiming through a mortgagor as successor. Where a mortgage is executed by a trustee of a land trust, the mortgagor is the trustee and not the beneficiary or beneficiaries.
- viii. **Owner** means any person who alone, jointly, or severally with others:
  - aa. Has legal title to the property, with or without accompanying actual possession thereof:

- bb. Has charge, care or control of the property as owner or agent of the owner or an executor, administrator, trustee or guardian of the estate of the owner: or
- cc. Is the agent or the owner for the purpose of managing, controlling the property or collecting rents, or is any other person managing or controlling the property or is any person entitled to the control or direction of the management or disposition of the property. This ordinance definition excludes Real Estate listing Agents when acting exclusively in that capacity.
- ix. ***Property*** means any real, residential, commercial or industrial property, or portion thereof, located within the City of Memphis, including buildings or structures situated on the property.
- x. ***Residential Property*** means buildings of three stories or less in height where the whole building or parts thereof are designed or used as residential units or auxiliary uses to a residential unit.
- xi. ***Vacant*** means any building or structure that is not lawfully occupied or inhabited as evidenced by the conditions set forth in the definition of “*Evidence of Vacancy*” above.

**(c) Applicability.**

- i. These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather an additional remedial remedy available to the City, above and beyond any other state, county or local provisions.
- ii. Parties identified as owners in subsection (b) (viii) (bb and cc) above will not be fined or held liable for fines (under the doctrine of agency) in cases where their principal is disclosed and is identified by subsection (b) (viii) (aa).

**Sec. 48-24.**

**(a) Establishment of a Registry.**

Pursuant to the authority of T.C.A. §6-54-113, the City of Memphis or its designee shall establish a registry for all real property, including condominiums located within the municipal boundaries of the city of Memphis.

**(b) Election of Owner, or Agent for Notice and Service of Process.**

All owners of real property, including condominiums are required to elect that the property owner (one or more) serve as agent for service of process, and provide a current working address to which notice can be sent, and service of process is to be directed.

**(c) Appointing Agents or Designees for Process of Service.**

All owners of real property, including condominiums, may elect to appoint or designate another party or entity as agent for notice and service of process by providing to the City of Memphis or its designee the name of the person or entity, and, the address to which notice or service can be directed.

**(d) Registry Content.**

The elections described above shall be made or updated if any material change in ownership or agent designation has occurred. Confirmation of, or, change in designations shall be executed concurrent with or before the annual deadline for property tax payment to the City of Memphis. Confirmation of, or, change in designation or agent for notice and service of process shall be fulfilled upon receipt by the City of Memphis or its designee, on the form and pursuant to the directions provided to owners with the tax bill mailed to the property owner annually.

**(e) Agents for Notice and Service of Process for Condominium Owners.**

In the case of condominium owners, the resident association, or other agent for service of process, shall be identified as agent for notice and service of process for all owners/members of the condominium association.

**(f) Failure to Comply with Notice and Service of Process Registration.**

Failure to comply with this ordinance will result in service of process and notice being effected by serving the Secretary of State for the State of Tennessee, pursuant to T.C.A.

§§ 20-2-201; 20-2-202; 20-2-214; 20-2-216; 20-2-223, 20-2-225; 48-15-105; 48-25-107; 48-55-104, or to the last known person or entity shown as the owner or elected agent for notice and service of process.

**Sec. 48-25.**

**(a) Fine.**

Failure to comply with the requirements of this ordinance will result in a fine of two hundred dollars (\$200.00).

**(b) Opportunity to Cure Violation.**

Property owners cited for violations under this ordinance, Section 48-(23-25) will not be held liable if lack of registration is cured within 10 days of the date of the citation.

**I. FORECLOSURE AND DEFAULT REGISTRY**

**Sec. 48-26.**

**(a) Establishment of a Residential Foreclosure and Default Registry.**

Pursuant to the authority of T.C.A. §6-54-113 and in addition to the requirements of Sec. 48-24 set forth herein, the City of Memphis or its designee shall establish a Foreclosure and Default Registry and require registration by the mortgage holder of single family residential real property, including condominiums within the city of Memphis upon Notice of Default or Foreclosure, or abandonment (vacancy), whichever occurs first.

**Sec. 48-27.**

**(a) Registration of Real Property Upon Default or Foreclosure.**

Any mortgagee who holds a mortgage on single family residential housing, including condominiums located within the City of Memphis, shall, upon Notice of default to the mortgagor, foreclosure by the mortgagee, or evidence of vacancy, whichever occurs first, perform an inspection of the property within 30 days of occurrence. The mortgagee shall, within ten (10) days of the inspection, register the property with the Division of Code Enforcement, or its designee, on forms provided by the City, and indicates whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be vacant or occupied.

**(b) Occupied Defaulted Or Foreclosed Property.**

If the property is occupied but remains in default or foreclosure, it shall be inspected by the mortgagee or his designee monthly until (1) the mortgagor or other party remedies the default, or (2) it is found to be vacant or shows evidence of vacancy, or (3) at such time the property is deemed abandoned by the mortgagee or the City, and the mortgagee shall, within ten (10) days of that occurrence, update the property registration to a vacancy status on forms provided by the City. The vacant property shall remain in the registry.

**(c) Registration Requirements.**

Registration pursuant to this section shall contain the name of the owner, mortgagee and the servicer, the direct mailing address of the mortgagee, owner, and the servicer, a direct contact name and telephone number for each party, facsimile number and e-mail address

for each party, the folio or tax number, and the contact name and telephone number of the person responsible for the security and maintenance of the property. Upon either, default, foreclosure, or vacancy both the mortgagee, or his designated agent, and the property owner shall be responsible for compliance with this ordinance.

**(d) Annual Registration Fee For Defaulted and Foreclosed Property.**

A non-refundable annual registration fee in the amount of \$200.00 per property, shall accompany the registration forms. The registration fee shall be paid by the mortgagee or his agent.

**(e) Registration of Transferred Property.**

This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred by the mortgagee, or it's agent, or when any property is transferred under a deed in lieu of foreclosure/sale, or quit claim deed, or by transfer, whether filed with the Register of Deeds or not, and, upon transfer of ownership upon the death of a prior owner.

**(f) Duration of Registration for Defaulted and Foreclosed Property.**

Properties subject to this section shall remain under all registration requirements, including but not limited to, the inspection, security, and maintenance standards of this section as long as the property remains vacant or in default. Property may be removed from the registry upon verification by the City of Memphis or its designee of cure of

default, cure of vacancy; and cure of any existing code violations, with title vested in an owner of record.

**(g) Reporting Changes in Service, Property Conditions, Mortgage Status, etc.**

Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten (10) days of the change.

## **II. COMPLIANCE**

**Sec. 48-28.**

**(a) Failure to Comply.**

Failure of the mortgagee and/or owner to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this article is a violation of this article and shall be subject to enforcement and / or fine.

**(b) Description of Violation: Civil Penalty.**

Any violation of (Sec. 48-27(a) – (g) of this ordinance shall result in a fine of five hundred dollars (\$500.00) per violation payable by the mortgagee.

**(c) Collections and Use of Funds.**

All funds collected under this ordinance 48-23 through 28, including fines and fees are to be reserved for the use of the office of Code Enforcement for the removal of blight in the City of Memphis.

**SECTION 2. BE IT FURTHER ORDAINED,** That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

**SECTION 3. BE IT FURTHER ORDAINED,** That this Ordinance shall take effect from and after the date it shall have been passed by the City Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.